

OFFICE OF THE ARMY GENERAL COUNSEL
FISCAL LAW COURSE

LIABILITY OF ACCOUNTABLE OFFICERS

SECTION M

PERSONAL LIABILITY

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I. CONSTITUTIONAL AUTHORITY

. . . No money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

Article 1, Section 9

II. STATUTORY AUTHORITY

31 U.S.C. § 3325	Vouchers
31 U.S.C. § 3526	Settlement of accounts
31 U.S.C. § 3527	General Authority to relieve accountable officials and agents from liability
31 U.S.C. § 3528	Responsibility and relief from liability of certifying officials
31 U.S.C. § 3529	Requests for decisions of the Comptroller General
31 U.S.C. § 3342	Check cashing and exchange transactions
5 U.S.C. § 5514	Installment deductions for indebtedness because of erroneous payment
28 U.S.C. § 1496	Disbursing officers' claims
28 U.S.C. § 2512	Disbursing officers: relief

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III. REGULATORY AUTHORITY

AR 37-103

IV. DEFINITION OF ACCOUNTABLE OFFICER

- A. Any government officer or employee who, by reason of the person's employment, is
 - 1. responsible for, or
 - 2. has custody of, government funds.
- B. Any government officer or employee who physically handles government funds, even if only once or occasionally, is accountable for those funds while in the officer's or employee's possession.

V. TYPES OF ACCOUNTABLE OFFICERS

- A. Certifying Officer
 - 1. A person who certifies that payment vouchers are correct and ready for payment.
 - 2. The officer doesn't have physical possession of the funds.
 - 3. Under 31 U.S.C. § 3528, a certifying officer is responsible for
 - a. the existence and correctness of the facts stated in the certificate or voucher or supporting papers,

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- b. the legality of the proposed payment under the appropriation or fund involved,
- c. the correctness of the computations on the certified voucher, and
- d. making good to the U.S. the amount of any illegal, improper or incorrect payment resulting from:
 - (i) any false, inaccurate or misleading certification made by the officer
 - (ii) any payment prohibited by law or which did not represent a legal obligation under the appropriation or fund involved.

B. Disbursing Officer

- 1. A person who disburses funds and renders accounts in accordance with laws and regulations governing disbursement of public funds. See 31 U.S.C. § 3325; AR 37-103.
- 2. The officer has physical possession or control of the funds.
- 3. A disbursing officer is responsible for
 - a. disbursing funds only upon, and in accordance with, duly certified vouchers,
 - b. examining vouchers as necessary to ensure that they are in the proper form, are duly certified and approved, and

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- c. correctly computed on the basis of the facts certified.

C. Cashier

A person who is appointed to perform limited cash disbursing functions or other cash-handling operations to assist a finance officer. See AR 37-103.

D. Collecting Officer

A person who is authorized to receive or collect money for the government.

VI. LIABILITY OF ACCOUNTABLE OFFICERS

- A. Strict liability - the accountable officer is an insurer of the funds.
- B. An accountable officer is automatically liable when the loss occurs.
 - 1. A certifying officer is not liable unless an improper payment has been made on the basis of the certified voucher. Liability arises automatically at the moment of the improper payment.
 - 2. A disbursing officer, cashier, or other officer who has physical possession or control of government funds is automatically liable when the physical loss occurs or erroneous payment is made.

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- C. There may be more than one accountable officer
 - 1. because more than one person was negligent: the employee whose error caused the loss, and the supervisor who entrusted funds to an unqualified employee.
 - 2. because their positions make both of them accountable: the employee who makes the actual payment, and the officer in whose name the account is held.
 - 3. Relief must be asked for all accountable officers.

- D. An accountable officer is only accountable for funds in the possession of the Government.
 - 1. Interest and penalty charges on amounts owed to the U.S. are not in its possession, so the officer is not liable for them. Matter of: Liability of Accountable Officer for Lost Interest, 64 Comp. Gen. 303 (1985).
 - 2. A time discount lost through failure to submit the voucher within the stated time is not within the possession of the Government. The officer is not liable for the loss.
 - 3. An officer is liable for submitting a voucher for the full amount during the period in which a time discount is available, because the voucher is inaccurate.

- E. Check Cashing
 - 1. GAO determined that military departments have authority to grant relief to an accountable

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officer in cases involving check cashing under 31 U.S.C. § 3342. The statute does not require a finding of due care or lack of fault prior to granting relief. 10 U.S.C. § 2781 (2) gives authority to use appropriations to adjust accounts of disbursing officers. 70 Comp. Gen. 616 (1991).

2. If the agency declines to adjust the officer's account, the case will be sent to the GAO for relief under 31 U.S.C. § 3527(c) as an erroneous payment, not a physical loss.
 - a. Under 31 U.S.C. § 3527(c), the Comptroller General may grant relief for an illegal, improper, or incorrect payment if the payment was not the result of bad faith or lack of reasonable care by the disbursing officer. Relief may be denied if the head of the agency did not carry out diligent collection efforts.
 - b. Under 31 U.S.C. § 3527(b), the Comptroller General may grant relief for the physical loss or deficiency of funds if the Secretary of Defense or the appropriate Service Secretary finds that the officer was carrying out official duties when the funds were lost, and the loss was neither the result of an incorrect or illegal payment nor the result of fault or negligence on the part of the official. The finding of the Secretary is binding on the Comptroller General.

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VII. STANDARD OF CARE REQUIRED OF ACCOUNTABLE OFFICERS

A. Due Care

1. An accountable officer must exercise the highest degree of care in the performance of duty.
2. An accountable officer is not liable for Acts of God or the public enemy.
3. Neither lack of fault nor negligence affects an accountable officer's legal liability. It may provide a basis for granting relief from the obligation to repay the amount of the loss or erroneous payment.

B. Proving Due Care

1. The loss of funds entrusted to an accountable officer raises a rebuttable presumption of negligence. 54 Comp. Gen. 112 (1975). The accountable officer bears the burden of affirmatively proving the use of the requisite degree of care. The reasonable care standard does not vary with age or experience.
2. Regulations dictate the accountable officer's actions in most instances. Failure to follow the regulations will result in a finding of negligence and a denial of relief if the negligence caused the loss. 49 Comp. Gen. 38 (1969).
3. If there are no regulations governing the specific actions of the accountable officer, the Comptroller General will apply a

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reasonable person standard. That is, did the accountable officer do what a reasonably prudent and careful person would have done to take care of the person's own funds or property of like description under like circumstances? 54 Comp. Gen. 112 (1974).

4. Mere agency determination that an accountable officer is faultless is insufficient. There must be sufficient evidence included in the request for relief for the Comptroller General to independently make the same determination as the agency.

C. Standard of care required of a supervisor:

1. the supervisor must maintain a system of controls to prevent losses and erroneous payments and
2. take steps to ensure that controls are implemented.
3. The supervisor must substantiate these facts.
4. The errors of a subordinate are not the errors of the supervisor if controls are in place to prevent mistakes. However,
5. entrusting funds to an inexperienced or incapable employee may make the supervisor equally liable for the loss. 70 Comp. Gen. 389 (1991).

D. A disbursing officer is entitled to rely on information from a certifying officer

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1. which the disbursing officer has no way of knowing is incorrect,
 2. unless the disbursing officer has reasonable doubts as to the correctness of the facts on or attached to the voucher.
- E. An accountable officer must make adequate efforts to collect any erroneous payments. Within three months, the debt must be sent to the collection department or the Comptroller General may deny relief. Authority to deny relief based on lack of adequate collection efforts is discretionary, not mandatory. 62 Comp. Gen. 91 (1982).
1. The Comptroller General will look to the collection regulations.
 2. Generally, a single letter to a debtor is not sufficient to show an attempt at collection. 62 Comp. Gen. 91, 98 (1982).

VIII. PROTECTION AND RELIEF FROM LIABILITY

- A. Advance decisions from the Comptroller General
1. Contracting and procurement officers may submit to the Comptroller General for advance decision any question which affects the award of public contracts and which requires a determination prior to award. 31 U.S.C. § 3529.
 2. A certifying or disbursing officer, or the head of an agency, may request an opinion concerning the propriety of a certification or disbursement.

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- a. Army officials should attempt to resolve questions about payments through their local contracting officer or local Judge Advocate office. AR 31-1, p. 20-19.
 - b. If doubts remain and the amount is in excess of \$100, request a decision from the Comptroller General.
 - c. If the amount is less than \$100, request advice from DFAS-IN legal office. If doubts remain, seek advice from the Comptroller General.
3. The Comptroller General found that an accountable officer faced with questionable vouchers did not exercise reasonable care by relying on officials in the agency instead of applying to the Comptroller General for an advance decision. 65 Comp. Gen. 858 (1986); 49 Comp. Gen. 38 (1969).
- B. The liability of accountable officers is statutory. Agencies cannot shield officers from liability through devices such as Memoranda of Understanding. Matter of: Improper Payments Resulting from the Use of an Automated Address-Correction System 69 Comp. Gen. 85 (1989).

IX. OBTAINING RELIEF FROM LIABILITY

- A. Comptroller General
1. 31 U.S.C. § 3528, Responsibilities and Relief from Liability of Certifying Officials, does not apply to disbursements of military departments, except for departmental pay and allowances in the District of Columbia. However, the Army adopted the statutory standard for its certifying officers.

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- a. Relief may be granted if either of the following conditions is met:
 - (i) an improper certification was based on official records and
 - (ii) the officer did not know or could not by reasonable diligence and inquiry have discovered that the information was incorrect,

or

 - (iii) the obligation was incurred in good faith, (the officer had no reason to doubt his authority to make the certification), B-241879, April 26, 1991,
 - (iv) payment was not prohibited by law,
 - (v) the government received some benefit, and
 - (vi) the agency made diligent efforts to collect the debt. 70 Comp. Gen. 723 (1991).
 - b. The statutory standard must be followed. The request for relief must be sent by the agency head, and must contain evidence sufficient for the Comptroller General to independently determine that the standards for relief have been met. B-241019, August 19, 1991 (unpub.).
2. Relief for disbursing officers is governed by 31 U.S.C. § 3527. The statute distinguishes between physical losses (31 U.S.C. § 3527(B))

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and erroneous payments (31 U.S.C. § 3527(C)). The distinction is important because it determines which agency may grant relief. Military departments may grant relief for physical losses, but only the Comptroller General may grant relief for erroneous payments. 70 Comp. Gen. 616 (1991).

- a. The authority of military departments to treat deficiencies as physical losses is limited: it includes loss by theft, burglary, or in shipment; loss by fire, accident, or natural disaster; a shortage or deficiency with absolutely no evidence to explain the discrepancy; and loss resulting from fraud or embezzlement by subordinate finance personnel.
 - b. Erroneous payments result from the disbursement of public funds. Losses from cashing checks, whether from fraud or insufficient funds, are disbursements, and are therefore treated as erroneous payments.
3. 31 U.S.C. § 3527(B)(1) governs relief for a disbursing officer of the Armed Forces for physical loss or deficiency of public money.
- a. The request for relief must be from the appropriate agency official, such as the Secretary of Defense or the Secretary of the appropriate military department, and the agency head must determine that
 - (i) the officer was carrying out official duties when the loss or deficiency occurred,

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(ii) the loss or deficiency was not the result of fault or negligence by the officer.

(iii) the finding of the Secretary is binding on the Comptroller General.

4. Relief for improper payments is granted by the Comptroller General under 31 U.S.C. § 3527(C), if the payment was not the result of bad faith or lack of due care on the part of the officer. Relief may be denied if collection action has not been diligently pursued.
5. The Comptroller General may order the adjustment of the appropriate fund.
6. If relief is denied, an offset of up to 15% from the accountable officer's salary is specifically authorized by 5 U.S.C. § 5514 to recover the debt owed as a result of the loss. The offset is required to be initiated immediately.
7. If the officer requests it, the Comptroller General must report the debt to the Attorney General, who is required to institute legal action against the officer. The officer may then have his liability determined by a court.
8. Collection of the amount owed proceeds during the pendency of the litigation. 64 Comp. Gen. 605 (1985).

B. Court of Federal Claims

1. Under 28 U.S.C. § 1496, the Court of Federal Claims has jurisdiction over the claims of

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disbursing officers for relief from responsibility for the loss of Government funds, vouchers or other papers in the line of duty.

2. Under 28 U.S.C. § 2512, whenever the court finds that a loss by a disbursing officer was without the fault or negligence of the officer, it shall render a judgment requiring the GAO to credit the officer's accounts for that amount in settlement of the accounts.

X. BASES FOR RELIEF

- A. Relief is a matter of equity and is fact specific.
- B. Because an accountable officer is strictly liable, a loss or deficiency raises a rebuttable presumption of negligence. The accountable officer must affirmatively show that there was no negligence, bad faith, or fraud.

1. Negligence

- a. Gross negligence is not required for liability. Simple negligence on the part of the accountable officer is sufficient to bar relief.
- b. If there is negligence, it must be the proximate cause of the loss. B-238123, 70 Comp. Gen. _____, February 27, 1991. (Failure of clerk to obtain Statement of Claimant, or Treasury report on original check, before issuing successor check was not the proximate cause of the loss. The clerk followed Navy regulations allowing immediate re-issue of checks).

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- c. The Comptroller General has allowed relief when it is shown that more than one person had access to the funds, or that there is pervasive laxity in the security procedures of the office and that laxity is the proximate cause of the loss. Under either of these conditions, the Comptroller General has found that the loss should not be assigned to any one person. B-235147.2, August 14, 1991 (unpub); 63 Comp. Gen. 489 (1984). (The Comptroller General later overruled the earlier decision which found responsibility on the part of the supervisor for lax procedures. 65 Comp. Gen. 876 (1986)).
- d. Relief may not always be granted in cases of pervasive laxity because
 - (i) an accountable officer has a duty to report security weaknesses to appropriate supervisory personnel,
 - (ii) the officer has the duty to make the best of the security conditions available, however inadequate.
Matter of: SGT North, Jr. - Relief of an Accountable Officer, 69 Comp. Gen. 586 (1990). (The officer, who did not have access to a safe, placed the funds out of sight and locked the room. The Comptroller General relieved him of liability for the funds when the room was burglarized because there was no fault or negligence on his part).

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(iii) The determination of whether to grant relief may turn on whether that duty has been breached.

2. Bad faith or fraud

- a. The "tainted day" rule has been abolished. Under that rule, an accountable officer was liable for all expenses paid for on the day on which fraudulent expenses were claimed. Since the loss to the Government is the amount of overpayment due to fraud, the Comptroller General found that the officer should be liable only for the amount of the overpayment. Matter of: Determining the Amount of Accountable Officer Liability for Improperly Paying Fraudulent Travel Subsistence Expense Claims, 70 Comp. Gen. 463 (1991).

C. The use of due care is the basis of relief. Relief will not be granted on the basis of

1. inadequate training or inexperience. However, entrusting funds to an inexperienced or incapable subordinate may make a supervisor equally liable for the loss.
2. hardship of repayment by the accountable officer.
3. heavy workload.
4. an exemplary work history.

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D. Statute of Limitations

1. The officer's account is considered settled after the 3 year period prescribed by 31 U.S.C. § 3526.
2. The Comptroller General is without authority to grant relief after the 3 year period. B-239802, April 3, 1991 (unpub.). An agency must therefore report financial irregularities to the Comptroller General within two years of the time it receives a substantially complete account.
3. The Comptroller General has found that the statute of limitations only applies to cases involving erroneous payments made by accountable officers. 60 Comp. Gen. 674 (1981).
 - a. The statute does not apply to losses from disbursements involving fraud or criminal activity
 - (i) on the part of the accountable officer, by the terms of the statute,
 - (ii) or on the part of the subordinate finance personnel, which are considered physical losses.
 - b. It does not apply to physical losses.
4. The Comptroller General considers the agency to have received an account at the time the agency's accounts are substantially complete, whether or not they are properly documented or filed, or at the later of

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- a. when an accountable officer certifies a periodic statement of accountability, or
 - b. when an agency receives the information placing it on notice that a deficiency exists:
 - (i) if the deficiency is the result of a duplicate payment or forgery, when the agency receives notice of the loss from the Treasury,
 - (ii) if the deficiency is the result of fraud, embezzlement or criminal activity, when the loss is discovered and reported to the appropriate agency officials.
 - c. A delay in receiving documentation supporting the statement of accountability will suspend the running of the statute.
5. Only the Comptroller General, not the agency, can suspend the running of the statute of limitations. An agency's attempt to hold the officer liable will not toll the statute. 70 Comp. Gen. 420 (1991).
6. Liability must be established within the 3 year period. Collection of the deficiency from the officer need not start or finish within the 3 year period.

X. CONCLUSION